

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

COREY JOSEPH JACKSON,

Defendant-Appellant.

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UNPUBLISHED

August 16, 2007

No. 268940

Wayne Circuit Court

LC No. 02-000394-01

Before: Smolenski, P.J., and Fitzgerald and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his sentence of 19 to 30 years in prison imposed on remand on his conviction of voluntary manslaughter, MCL 750.321. In addition, defendant, via appointed counsel and acting *in propria persona*, challenges the trial court's order denying his motion for a new trial, and raises other issues related to his trial. We affirm defendant's sentence imposed on remand, and reject his other issues as not properly before us.

Defendant was convicted of voluntary manslaughter and felon in possession of a firearm, MCL 750.224f, in the shooting death of Michael Saunders.<sup>1</sup> The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to concurrent terms of life in prison for manslaughter and three to five years for felon in possession of a weapon. Defendant appealed, and in *People v Jackson*, unpublished per curiam opinion of the Court of Appeals, issued November 17, 2005 (Docket No. 256297), another panel of this Court affirmed defendant's convictions but vacated his sentence for voluntary manslaughter and remanded for resentencing on that conviction.

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<sup>1</sup> This trial was defendant's second arising out of the incident. In the first proceeding, defendant was convicted by a jury of second-degree murder, MCL 750.317, felon in possession of a firearm, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant appealed as of right. This Court remanded the matter to the trial court for a hearing pursuant to *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973). *People v Jackson*, unpublished order of the Court of Appeals, entered August 26, 2003 (Docket No. 247311). After the hearing, the trial court granted defendant a new trial.

The trial court conducted a resentencing, and sentenced defendant to concurrent terms of 19 to 30 years in prison for voluntary manslaughter, and three to five years for felon in possession of a firearm, with credit for 1,496 days served on each sentence.

Subsequently, the Department of Corrections notified the trial court that the judgment of sentence did not indicate that defendant had been sentenced as a habitual offender. Thereafter, the trial court entered an amended judgment of sentence indicating that defendant was sentenced as a fourth habitual offender.

After resentencing occurred, defendant, acting *in propria persona*, moved for a new trial on the basis of newly discovered evidence. Defendant asserted that he had been approached by another inmate, John Gray, who stated that he was involved in the incident that led to defendant's convictions, and that he could corroborate defendant's assertion of self-defense. The trial court denied the motion for a new trial on the ground that defendant knew of the existence of Gray prior to trial.

On appeal, defendant's appointed counsel and defendant, acting *in propria persona*, argue that the trial court's entry of an amended judgment specifying that defendant was sentenced as a fourth habitual offender denied defendant due process because the trial court effectively resentenced defendant without holding a hearing to determine that he was a habitual offender. We disagree.

We review constitutional questions de novo. *People v Cain*, 238 Mich App 95, 111; 605 NW2d 28 (1999). This issue is unpreserved; however, we can consider a dispositive constitutional issue if the record is factually sufficient. See *People v Brown*, 220 Mich App 680, 681; 560 NW2d 80 (1996).

At the resentencing hearing, defense counsel and the trial court discussed the guidelines, and confirmed that the guidelines had been adjusted to reflect defendant's status as a fourth habitual offender. The trial court and the parties were fully aware that defendant was to be resentenced as a fourth habitual offender. At no time did defendant challenge his record of prior convictions or assert that he had not been sentenced as a fourth habitual offender at the original sentencing hearing. The judgment of sentence entered after the resentencing hearing inadvertently omitted the notation that defendant had been sentenced as a fourth habitual offender. The trial court was authorized to enter an amended judgment to correct this clerical error. See MCR 6.435(A). The entry of the amended judgment did not increase the sentences imposed on defendant. No due process violation occurred.

Defendant's appointed counsel argues that the trial court abused its discretion when it denied defendant's motion for a new trial on the basis of newly discovered evidence.

This issue is beyond the scope of this Court's remand order. In its first opinion in this case, this Court affirmed defendant's convictions, but remanded for resentencing on voluntary manslaughter. Defendant was entitled to a second appeal of right, one limited to the scope of the remand. See *People v Kincade (On Remand)*, 206 Mich App 477, 481; 522 NW2d 880 (1994). Defendant is not entitled to raise an issue regarding the trial court's denial of his motion for a new trial in the context of this appeal. *Id.* This issue would be properly raised in a motion for relief from judgment. MCR 6.502.

In any event, this issue is barred by the law of the case doctrine. This Court's ruling on an issue constitutes the law of the case, and the issue may not be raised in a subsequent appeal after proceedings held on remand in a lower court. *People v Osantowski*, 274 Mich App 593, 614-615; \_\_\_ NW2d \_\_\_ (2007). In his original appeal of right from his second trial, defendant argued that he was entitled to a new trial based on newly discovered evidence, i.e., the statement by John Gray. The *Jackson* Court considered and rejected defendant's argument, concluding that Gray's statement was not newly discovered evidence because defendant knew of Gray's existence prior to trial. *Jackson, supra* at 2. That ruling constitutes the law of the case. *Osantowski, supra*.

The remaining issues in defendant's supplemental brief allege that trial counsel rendered ineffective assistance during defendant's second trial, and that defendant was prejudiced by false testimony given by a witness at that trial.

These issues are not properly before us, as they are outside the scope of this appeal of right. *Kincade, supra*. These issues would be properly raised in a motion for relief from judgment. MCR 6.502.

Affirmed.

/s/ Michael R. Smolenski  
/s/ E. Thomas Fitzgerald  
/s/ Kirsten Frank Kelly